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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 566.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

ADAM GLAB.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

FILED OCTOBER 18, 1877.

SUPREME COURT OF THE UNITED STATES.

No. 566.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

ADAM GLAB.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the circuit court of the United States for the district of Iowa, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between the United States of America, plaintiff in error, and Adam Glab, defendant in error, a manifest error hath happened, to the great damage of the said United States of America, as by its complaint appears: We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceeding aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 1st day of August, A. D. 1877.

[SEAL.] E. R. MASON,
Clerk U. S. C. C., District of Iowa.

Allowed.

JOHN F. DILLON, *Judge.*

(Indorsed:) U. States vs. Adam Glab. Filed Aug. 6, 1877. E. R. Mason, clerk.

2 In obedience to the foregoing writ of error, I, Edward R. Mason, clerk of the circuit court of the United States for the district of Iowa, do hereby certify and return that hereto annexed is a full, true, and complete copy of record and proceedings and all things concerning the same, in a certain cause wherein United States is plaintiff and Adam Glab is defendant, as full, true, and complete as the originals of the same now remain on file and of record in my office.

I further certify that the original citation with the marshal's return of service endorsed thereon is hereto attached.

In testimony whereof I hereunto subscribe my name and affix the seal of said court at my office in Des Moines, in said district, this the 26th day of September, A. D. 1877.

[SEAL.] E. R. MASON,
Clerk U. S. C. C., Dist. Iowa.

3 UNITED STATES OF AMERICA,
District of Iowa:

In the district court of the United States for the district of Iowa, northern division, November term, 1874.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
ADAM GLABB, DEFENDANT.

The United States of America, by James T. Lane, their attorney for the district of Iowa, who sues for the said United States, complains of the defendant Adam Glabb, of the county of Dubuque, of the district

of Iowa, and claims of the said defendant one thousand five hundred dollars, and for cause of such claim avers:

1st. That heretofore, to wit, from the 1st day of July, 1873, to the 30th day of April, 1874, at city of Dubuque, in the county of Dubuque, State and district of Iowa, the said defendant did carry on business as a brewer without having paid the special internal-revenue tax therefor to plaintiff as required by law; whereby, and by force of the
4 statutes in such case made and provided, an action hath accrued to the said plaintiff to demand and have of and from defendant the sum of five hundred dollars.

2d. And for further cause plaintiff avers that heretofore, to wit, from the 1st day of July, 1873, to the 30th day of April, 1874, at city and county of Dubuque, State and district of Iowa, the said defendant did carry on business as a retail dealer in liquors without having paid the special internal-revenue tax therefor to plaintiff as required by law; whereby, and by force of the statutes in such case made and provided, an action hath accrued to the said plaintiff to demand and have of and from defendant the sum of five hundred dollars.

3d. And for further cause plaintiff avers that heretofore, to wit, from the first day of July, 1873, to the 30th day of April, 1874, at city and county of Dubuque, State and district of Iowa, the said defendant, Adam Glabb, did carry on the business of a without having paid the special internal revenue tax therefor as required by law
5 to plaintiff; whereby, and by force of the statutes in such case made and provided, an action hath accrued to the said plaintiff to demand and have of and from the said defendant the sum of five hundred dollars.

That the said sum of one thousand five hundred dollars has been duly demanded of the said defendant, and, although often requested, the said defendant has neglected and refused to pay the same to the plaintiff; wherefore the said United States prays judgment for said sum, with interest and costs, against said defendant.

JAMES T. LANE,
U. S. Att'y.
By JOHN M. BALLOU,
His Ass't.

(Endorsed:) No. . The United States vs. Adam Glabb. Petition. Filed 24 day of October, A. D. 1874. S'g'd, H. K. Love, clerk.

6 *Summons.*

The United States of America, district court United States, district of Iowa, to the marshal of said district, greeting:

In the name of the President of the United States:

You are commanded to summon Adam Glabb, a citizen of the State of Iowa, to be and appear before the district court of the United States for the district of Iowa, at Dubuque, in said district, on the third Tuesday of November next, to answer unto the United States of America of a plea of debt, damages claimed of said defendant $1,500, and have then and there this writ.

Witness Hon. James M. Love, judge of the district court of the United States for the district of Iowa, this 24 day of October, A. D. 1874, and of the Independence of the United States of America the 98 year.

[L. S.] Attest: H. K. LOVE, *Clerk.*

7 This summons came into my hands for service on the 24th day of October, A. D. 1874, and served the same on each of the within named defendants, as follows: On Adam Glabb, the within named defendant, on the 2nd day of November, 1874, at Dubuque, Dubuque Co., Iowa, by reading the same to Adam Glabb, the within named defendant, and by delivering a true copy to the said Adam Glabb at the times and places above named.

PETER MELENDY, *Marshal*,
By J. G. SHATTOCK, *Spec. Deputy.*

Marshal's fees.

Service on one defendants at $2.00	$2 00
One copies	1 00
Mileage 6 miles, at 5 per mile	30
Total	$3 30

(End.:) No. . United States district court, district of Iowa. The United States of America, plaintiff, vs. Adam Glabb, defendant. Summons. Filed 17 day of November, A. D. 1874. H. K. Love, clerk, by A. Hobbs, deputy.

8 *Demurrer.*

In U. S. dist. court, district of Iowa. Nov. term, 1874.

UNITED STATES
vs.
ADAM GLAB.

Now comes the plaintiff, by James T. Lane, its attorney, and demurs to defendant's answer filed in said cause, for the reason that the matters set forth in said answer constitute no defense to plaintiff's claim.

JAMES T. LANE.
U. S. Att'y for Iowa,
By JOHN M. BALLOU,
His Assistant.

(Endorsed:) 1054. United States vs. Adam Glab. Demurrer. , district att'y.

9 THE UNITED STATES OF AMERICA
vs.
ADAM GLAB. } No. 739.

Case pending in the district court of the United State' for the district of Iowa, at April term, 1875.

The following facts are agreed upon by the parties on which the above case shall be submitted, viz:

On the 1st day of May, 1874, Glab and Sness, as copartners, paid their special tax as brewers of the 1st class for one year from said date, and took the proper receipt therefor. In about three months from the date of said receipt said firm dissolved, and Glab having purchased the interest of said Sness in said business of brewing, and carried on the

business in his own name, in the same place, during the balance of the time covered by said receipt, without again paying a special tax.

(Signed) JAMES T. LANE, *U. S. Att'y.*
(") SHIRAS, VAN DUZEE AND HENDERSON,
(") WILSON AND O'DONNELL,
Att'ys for Def't.

10 (Endorsed): No. 1054. U. S. dist. court, Iowa. Northern division. United States vs. Adam Glab. Stipulation as to the facts in the case. Filed 27 April, 1875. Alfred Hobbs, deputy clerk.

11 In dist. c't of U. States. Nov. term, 1874.

UNITED STATES OF AMERICA
vs.
ADAM GLABB.

Defendant, appearing in this case, says that the plaintiff ought not to have maintain this action, for the reason that heretofore, to wit, on the day of A. D. he was implea'ed in an action brought by the United States against this defendant, wherein the matters and things herein charged against him were finally adjudicated and passed upon by this court, and this defendant discharged therein by the judgment and consideration of this court, and asks he may be dismissed by this court.

(S'g'd) T. S. WILSON,
Def't Att'y.

(Endorsed): No. 1054. United States of America vs. Adam Glabb. Answer. Gen'l denial & former adjudication. Filed 17 November, 1874. A. Hobbs, dep'y clerk.

12 UNITED STATES OF AMERICA,
District of Iowa:

In the district court of the United States for the district of Iowa, northern division. November term, 1874.

UNTED STATES of AMERICA, PLAINTIFF,
vs.
ADAM GLABB.

And now comes the said defendant, Adam Glabb, and, for answer to the petition of plaintiffs, says that he denies all and singular the allegations of said petition. He denies that heretofore, to wit, from the 1st day of July, 1873, to the 30th of April, 1874, at the city of Dubuque, in the county of Dubuque, State and district aforesaid, the said defendant did carry on business as a brewer without having paid the special internal-revenue tax therefor to plaintiff as required by law.

And for further answer said defendant denies that heretofore, to wit, from the 1st day of July, 1873, to the 30th April, 1874, at the city of Dubuque aforesaid, he carried on the business as a retail dealer in liquors without paying or having paid the special internal-rev-
13 enue tax therefor as required by law wherefore defendant asks to be dismissed with costs.

WILSON AND O'DONNELL,
Att'ys for Def't.

(Endorsed): No. 1054. U. S. dist. c't Iowa, northern division. The United States vs. Adam Glab. Defendant's answer. Filed 17 November, 1874. A. Hobbs, dep. clerk.

14 THE UNITED STATES OF AMERICA } No. 739.
vs.
ADAM GLAB. }

Case pending in the district court of the U. S. for the district of Iowa at the November term, A. D. 1874.

It is hereby stipulated and agreed that the above case may be reinstated for trial at the next term of said court, at which time the defendant's plea of former acquittal shall be withdrawn and the case submitted to the court on the other pleas and the agreed statement of facts; either party having the right of appeal.

February 3d, 1875.

(S'g'd) JAMES T. LANE, *U. S. Att'y.*
(") SHIRAS, VAN DUZEE & HENDERSON,
(") WILSON AND O'DONNELL,
Att'ys for Def't.

(Endorsed:) No. 1054. U. S. dist. court Iowa, northern division. The United States vs. Adam Glabb. Stipulation as to reinstating case. Withdrawal of plea of former adjudication and as to resubmitting case. Filed 27 April, 1875. Alfred Hobbs, deputy clerk.

15 United States district court, northern division of Iowa.

Suit for damages. Violation of revenue law, heretofore pending in this court.

UNITED STATES } No. 1054.
vs.
ADAM GLABB. }

And now, on this 29th day of April, A. D. 1875, comes the plaintiff by James T. Lane, esq., United States attorney, and the defendant by Thomas Wilson and O'Donnell, his attorneys, and by written stipulation of the parties this case is reinstated upon the docket of this court to be tried anew, and by the order of dismissal rendered at the last November term of this court is set aside, and the plea of former acquittal is withdrawn, and this case is submitted to the court upon the following agreed statement of facts, to wit:

On the 1st day of May, 1874, Glabb and Sness, as copartners, paid their special tax, as brewers of the first class, for one year from said date, and took the proper receipt therefor. In about three months
16 from the date of said receipt said firm dissolved, and Glabb purchased the interest of said Sness in said business of brewing, and carried on the business in his own name in the same place during the balance of the time covered by said receipt, and without again paying a special tax.

And the court, being duly advised in the premises, doth consider and adjudge that the defendant is not guilty of violating the revenue laws of the United States, and doth further consider and adjudge that said defendant, Adam Glabb, go hence without day.

Whereupon said plaintiff, by their attorneys, except to the decision of the court and present their bill of exceptions to the decision of the court, and give notice of appeal to the circuit court of the United States for the district of Iowa.

(Endorsed:) No. 1054 of dist. c't, U. S., northern division. The United States vs. Adam Glabb. Copy of final entry.

17 In the district court of the United States for the district of Iowa

I, H. K. Love, clerk of the said court for said district, do hereby certify that the foregoing transcript contains full, true, and complete copy of the final record-entry in the case of The United States of America vs. Adam Glabb, No. 739, pending in the northern division of the district, in a certain cause in said court wherein the United States, plaintiff, and Adam Glabb, defendant, as full, true, and complete as the original of the same now remain on file and of record in my office.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at my office in Dubuque, in said district, this 10th day of January, A. D. 1876.

[SEAL.]

H. K. LOVE,
Clerk U. S. C. C., District of Iowa,
By ALFRED HOBBS, *Deputy.*

(Endorsed:) No. 1054. United States of America vs. Adam Glabb. Certified transcript of final entry.

18 United States circuit court, district of Iowa. October term, A. D. 1876.

THURSDAY, *October* 31, 1876.

THE UNITED STATES
vs.
ADAM GLAB. } Appeal.

This cause coming on this day for hearing, plaintiff appears by James T. Lane, and defendant by T. S. Wilson, and thereupon the cause was submitted to the court, and the same taken under advisement.

19 United States circuit court, district of Iowa. May term, 1877.

SATURDAY, *May* 19, *A. D.* 1877.

THE UNITED STATES
vs.
ADAM GLAB. } Appeal.

This cause having been submitted to the court at the last term, and the court being now fully advised, it is ordered, adjudged, and decreed that the judgment of the district court herein be, and the same is hereby, affirmed.

20 U. S. circuit court district of Iowa. Oct. term, 1876.

UNITED STATES }
vs.
ADAM GLAB. }

Writ of error to the district court.

This is a civil action to recover the penalty imposed for carrying on the business of a brewer without having paid the special tax therefor required by law.

The answer sets up former acquittal and general denial. By stipulation the cause was tried alone upon the general issue on the following agreed statement of facts: That on the 1st day of May, 1874, Glab & Sness, a copartnership, paid their special tax for carrying on the business of brewer of 1st class by the said firm & took proper receipt therefor.

21 That said firm carried on said business thereafter until the 1st of August, 1874, when the said firm was dissolved, and the said Glab purchased the interest of said Sness in said firm & business of brewing, and thereafter carried on the said business of a brewer of the 1st class at the same place during the remainder of the year covered by said license, viz, to the 1st of May, 1875, without having paid a special tax therefor other than that paid by said firm, & took out no license in his own name.

The question raised, therefore, is this: Whether under the circumstances said Glab could carry on said business of a brewer at the same place, in his own name, for the remainder of the license year without the payment of a special tax in addition to that paid by the firm.

The district court gave judgment for the defendant, & to re-
22 verse this judgment the case is brought by writ of error to this court by the government.

JAMES T. LANE,
District Attorney for the United States.
T. S. WILSON,
For the Defendant.

23 DILLON, Circuit Judge:

As the same business was carried on in the same place by Glab & not elsewhere by either partner; as no new member was introduced into the firm on the dissolution; as there is no express requirement in such a case that a new license shall be taken out by the successor by the provision that "any number of persons doing business as a firm at any one place shall be required to pay but one special tax" (Rev. Stats., sec. 3234), and by the spirit of the analogous cases as to succession in business, provided for by section 3247, & influenced by the consideration that the government received its revenue on this business in this place for a year, and is not therefore deprived of any revenue in fact, & that within the limitations of this case no door is opened for fraud, I
24 am of opinion that, upon the special facts, the judgment of the district court was right.

Affirmed.

(Endorsed:) United States v. Adam Glab. Opinion. Dillon.

25 DISTRICT OF IOWA, *ss*:

Mr. George Salot, of Dubuque, Io., is hereby appointed special deputy United States marshal for said district, for the purpose of serv-

ing the attached citation in the case of The United States of America is plaintiff, against Adam Glab, of Dubuque Co., Io., is defendant, in the Supreme Court of the United States, Washington, D. C.

August 7, 1877. Des Moines, Io.

JOHN W. CHAPMAN,
U. S. Marshal for said District.

UNITED STATES OF AMERICA, *ss*:

The President of the United States to Abram Glab:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the United States circuit court for the district of Iowa, wherein The United States of America is plaintiff in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John F. Dillon, United States circuit judge for the eighth circuit, this 1st day of August, 187 .

JOHN F. DILLON, *Judge.*

26 UNITED STATES OF AMERICA,
District of Iowa, ss:

I, John W. Chapman, marshal for United States in and for district of Iowa, hereby certify and return that I received this citation for service on the 7th day of August, A. D. 1877, and that I served the same on Adam Glab, the person therein named, in Dubuque County, on the 10th day of August, 1877, by reading the same to him, and then & there leaving a copy thereof with him personally.

JOHN W. CHAPMAN,
U. S. Marshal.
By GEO. SALOT,
Special Deputy.

Marshal's fees: Miles, 226, 6, 13.56; service, 2.00—$15.56.

(Indorsed:) United States of America vs. Adam Glab. Citation. Filed August 14, 1877. H. K. Love, cl'k, by E. R. Mason, dep.

(Indorsement on cover:) No. 566. The United States, plaintiffs in error, vs. Adam Glab. Iowa C. C. U. S. Filed 18th October, 1877.

In the Supreme Court of the United States.

OCTOBER TERM, 1878.

UNITED STATES
v.
ADAM GLAB. } No. 566.

ERROR TO UNITED STATES CIRCUIT COURT FOR IOWA.

PLAINTIFFS' BRIEF.

In the Supreme Court of the United States

OCTOBER TERM, 1878.

UNITED STATES
v.
ADAM GLAB. } No. 566.

ERROR TO UNITED STATES CIRCUIT COURT FOR IOWA.

PLAINTIFFS' BRIEF.

STATEMENT.

May 1, 1873 (wrongly printed 1874 in agreed facts), Glab and one Sness, as copartners, paid their special tax as brewers of the first class for one year from that date, and took the proper receipt therefor. About three months later the firm dissolved, Glab buying Sness's interest; and thereafter the business was carried on by Glab in his own name, at the same place, the rest of the year, without again paying a special tax (Record, 3, 4).

He was therefore complained of for carrying on the business of a brewer during these months without having paid the special tax therefor (Record, 1, 2). Upon the foregoing facts, judgment was entered for the defendant.

ASSIGNMENT OF ERRORS.

The plaintiffs assign for error the judgment in favor of the defendant, contending that the facts stated required a judgment against him.

BRIEF.

The act of June 30, 1864, c. 173, section 71, provided that no person, firm, company, or corporation shall be engaged in, prosecute, or carry on any trade, business, or profession, hereinafter mentioned and described, until he or they shall have obtained a LICENSE therefor in the manner hereinafter provided. (13 Stats., 248, sec. 71.)

By the act of July 13, 1866, c. 184, the whole of that section after the enacting clause was struck out, and a new one inserted which followed the same phraseology, *except* that it substituted the words "SPECIAL TAX" for license. (14 Stats., 113, top.)

In this form it is now incorporated into the revision. (R. S., sec. 3232.)

The sole purpose of this amendment was to make the imposition a tax upon a business carried on by a particular person in a specified place, instead of a permission to him there to carry it on. In either form, however, identity of person *and* place were necessary to the lawful conduct of the business there.

Persons carrying on the business without payment of the required tax were subject to fine and imprisonment. (14 Stats., 113, middle; R. S., sec. 3242.)

"Brewers shall pay $100," &c. (14 Stats., 117, item seventeen; R. S., section 3244, item first.)

The word "person" is to be "taken to include partnerships, firms, associations, bodies corporate or politic,

or any other party whatsoever." (14 Stats., 163, middle of page, section 44, last clause.)

The position of the government is that the special-tax stamp issued to a firm looks to the transaction of the business for which the tax was paid by that firm only, and that, upon dissolution of the firm, in the absence of any provision of law authorizing the use of its tax-receipt by its successor in business, the stamp taken out in its name is inoperative to shield from special tax such successor, whether a former member of the firm or not; the special-tax stamp being a receipt merely, and not a license, as the court (falling into the common error on this subject) regards it.

The statute makes no provision whereby one person can carry on business under a special-tax stamp issued to another, except in the cases of death or removal named in section 3241. The express mention of one thing is the exclusion of others. The specific provision for the cases named in section 3241 has been regarded as an intentional omission to provide for any other. A firm consisting of Smith, Jones, and Brown has always been considered by the Internal-Revenue Office a different person in law from one composed of Smith and Jones—Brown having retired. The withdrawal of one partner has been supposed to operate as a dissolution of the original firm; Smith and Jones, who continue the business, constituting a new and different artificial person, subject to special tax from the time of commencing business; and it is believed that this view of the law is sustained by the last clause of section 3233, requiring the registration with the collector of the name, &c., of every person engaged in a business upon which a special tax is imposed, which clause provides that, "in case of

a firm or company, the names of the several persons constituting the same, and their places of residence, shall be registered."

Revised Statutes, sec. 3234, provides that "any number of persons doing business in copartnership at any one place shall be required to pay but one special tax," re-enacting substantially act of July 13, 1866, c. 184, in this respect. (14 Stats., 115, near top, amending § 68 of previous statute.)

That is, three or four partners pay no more for joint business carried on in one place than a firm of two, or an individual doing the same business.

Suppose (as might easily have been the case when the act of July 13, 1866, was approved) two persons paying special tax as a firm doing a brokerage business had chosen to dissolve and each to act as a broker for himself at the old quarters, would the payment of the special tax by the firm exempt both, or either, or neither from payment of another tax after the dissolution? I contend it would exempt neither, because each is a different "person" from the firm composed of the two jointly.

Each separate legal *entity* must be taxed for a specified business conducted at a designated place.

EDWIN B. SMITH,
Assistant Attorney General.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1878.

THE UNITED STATES
vs.
ADAM GLAB. } No. 566.

ERROR TO UNITED STATES CIRCUIT COURT FOR IOWA.

BRIEF OF T. S. WILSON, ATTORNEY FOR APPELLEE.

IN THE SUPREME COURT OF THE UNITED STATES.

THE UNITED STATES
vs.
ADAM GLAB.

BRIEF OF T. S. WILSON, ATTORNEY FOR THE DEFENDANT.

POINTS.

1st. This suit is brought for violation of section 73, page 46, of the "Compilation of the internal revenue laws of the United States, in force after the act of June, A. D. 1872." This section is as follows, viz:

"Any person who shall exercise, or carry on any trade, business or profession, or do any act hereinafter mentioned, for the exercising, carrying on, or doing of which a special tax is imposed by law, without payment thereof, shall be liable," &c. (Here follows the penalty).

Section 72 requires the names of the individuals composing the firm to be registered by the collector, and section 74 requires that the place, at which the business is to be carried on, to be set forth in the receipt. This was done in this case. The issuance of the receipt and license to the licensees, is presumptive evidence that it *was* done, as the law presumes that the collector performed his duty. Further, there is no controversy between the parties to this suit on this point.

Section 75 provides, that in case of the death of any person who has paid tax, his executors, or heirs, may carry on the business as the deceased carried it on, with-

out paying an additional tax, and also provides that the licensee may change his place of business, provided that all cases of death, change of place or removal, *as aforesaid*, shall be registered by the collector.

2d. The change in this case was not required to be registered, because the death of the partner occurred *after* the dissolution of the partnership, and therefore the deceased's heirs had no authority to carry it on. Both courts below decided that as the individual names of Glab and Suess were duly registered, the license to both of them was a license to either to carry on one business at that particular place; that as the change did not admit any new member into the firm, and as no other person than Glab carried on the business under the license, he being one of the licensees, as the license was unexpired; and as the change did not, in any wise, affect the interest of the government, or its revenues derived from the brewery, Glab having purchased from Suess all interest in the brewery, including the amount paid by Suess for his part of the license, there was no necessity on Glab's part to take out a new license, and no violation of law.

3d. They further decided, that as a firm is composed of individuals, and as the collector's registry sets forth the individual names of this firm, it would be giving the statute a forced, unreasonable and illiberal construction, to say that Glab's continuing the business, for the privilege of which he had already paid, rendered him liable to the heavy penalties and forfeitures intended for those who wilfully violate the revenue laws; and that there was nothing legally or morally wrong on the part of Glab in the premises.

4th. The courts below also decided, that in this case it would be impossible to draw a distinction between Glab as an individual, and Glab of that firm, as the firm was composed of the individual Glab and the individual Suess.

5th. It will be remembered that the registry of the application for the license, made before the issuance of the

license, regulates the number of gallons of fermented liquors which may be made at that particular brewery, and requires the placing of stamps on each package of such liquors removed from the brewery for sale. The retiring of Suess from the partnership, did not affect either of these matters in any way, or in any manner affect the interest of the government. Suess' retirement did not diminish the revenues of the government. Glab carried on the business under his license in the same place, and in addition paid the stamp duty on what he manufactured. The decision of the District and Circuit Courts in this case was the fourth decision of said courts upon the same question, and may, therefore, be considered as one upon which the courts were fully advised. These cases were, 1st, in the United States vs. P. Sutton. Indictment. 2d, Same vs. Adam Glab, (this defendant). Indictment for the alleged violation set forth in this case. 3d. The present case in the District Court, and 4th, in the Circuit Court.

I will conclude with the remark made by the assistant United States district attorney, at the conclusion of the Sutton case, that "if the construction of the statute contended for by the commissioner of internal revenue was *the law*, it ought not to be the law."

In reply to the brief of the assistant attorney general, in which he states that "the special tax stamp looked to the transaction of business by the firm only," I have to say that the reasoning of the courts below answers this argument when they say that the firm is composed of individuals and a license to both is a license to either.

He says that the license was a receipt. Well, grant it, it was a receipt to Glab.

He further says, that one person cannot carry on a business under a license to another. This we do not deny, but say that Glab carried on the business under a license issued to himself as well as to another. He says that a firm consisting of Smith, Jones & Brown is dissolved by the withdrawal of Brown. This may or may not be the case. It is not so if Smith and Jones continue the busi-

ness. But should it be regarded as a dissolution, it is only so regarded as such among themselves. He illustrates the right of the claim of the government to have the license in this case paid twice by saying, that two brokers, having a partnership license, cannot dissolve and each carry on a separate business in the old quarters. This is true, but it is mere sophistry to argue from that proposition, that the partner who continues the business, must pay twice. It is not claimed by me that Glab & Suess could have dissolved and run separate breweries, or the same brewery separately, on the same locality described in their license, and also described in the books of the collector. In that case a fraud would be committed on the government and this fraudulent dissolution might cheat the government out of the price of one license. To this argument we reply, what we have substantially said before, that the registry of the application for the license, made before the issuance of the license regulates the number of fermented liquors which may be made at that *particular brewery* and requires the placing of stamps on each package of such liquors removed from the brewery for sale. The retirement of Suess did not affect either of these matters or in any manner affect the interest of the government or diminish its revenues. Glab alone carried on the same business under his license in the same brewery, not with any other person claiming through Suess or otherwise and he paid the stamp duty on what he manufactured. When the gentleman speaks of the liability in such cases of each legal entity, he indulges in such refinement of ideas and of language as is more subtle and unjust than comprehensible. According to such reasoning each "legal entity," having no relation to individuals whatever, its debts could only be collected from the property of the entity and not from that of the individual members of the "entity." We prefer common sense and plain justice to such reasoning.

The following is the opinion of the court below, by Dillon, judge:

"This is a civil action to recover the penalty imposed for carrying on the business of a brewery, without having paid the special tax therefor required by law.

The answer sets up former acquital and general denial. By stipulation the cause was tried alone upon the general issue on the following agreed statement of facts:

That on the first day of May, 1874, Glab & Suess, a co-partnership, paid their special tax for carrying on the business of brewers of first class by the said firm, and took proper receipt therefor.

That said firm carried on said business thereafter until the 1st of August, 1874, when the said firm was dissolved, and the said Glab purchased the interest of said Suess in said firm and business of brewing, and thereafter carried on the said business of a brewer of the first class at the same place during the remainder of the year covered by said license, viz: to the 1st of May, 1875, without having paid a special tax therefor other than that paid by said firm, and took out no license in his own name."

The question raised therefor is this: Whether under the circumstances said Glab could carry on said business of a brewer at the same place, in his own name, for the remainder of the license year without the payment of a special tax in addition to that paid by the firm.

The district court gave judgement for the defendant and to reverse this judgment the case is brought by writ of error to this court by the government.

"As the same business was carried on in the same place by Glab and not elsewhere by either partner, as no new member was introduced into the firm on the dissolution, as there is no express requirement in such a case that a new license shall be taken out by the successor, guided by the provision that "any number of persons doing business as a firm at any *one place* shall be required to pay but one special tax." (Revised statutes section 3234.) And by the spirit of the analogous cases as to *succession* in business provided for by section 3247 and influenced by the consideration that the government received its revenue

on this business in this place for a year and is not therefore deprived of any revenue in fact, and that within the limitations of this case, no door is opened for fraud, I am of the opinion that, upon the special facts, the judgment of the district court was right.

Affirmed."

This opinion is brief and to the point. The case is respectfully submitted.

T. S. WILSON,
Attorney for Appellee.